IN THE

# Supreme Court of the United States

October Term, 1943.

No. 227.

FRANCISCO BALLESTER-RIPOLL, *Petitioner*,

v.

COURT OF TAX APPEALS OF PUERTO RICO, *et al.*, *Respondents*.

## PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF.

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*To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Petitioner, Francisco Ballester-Ripoll, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit, entered in this cause on April 5, 1944, affirming the judgment of the Supreme Court of Puerto Rico; which, in turn, had affirmed, except in one

respect, the judgment of the Court of Tax Appeals of Puerto Rico sustaining a "reliquidation" by the insular Treasurer of the income tax of this petitioner for the calendar year 1940.

This case presents important questions of the powers of the Legislature of Puerto Rico.

## Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

## Statutes.

Constitutional and statutory provisions chiefly involved are in the Appendix (*infra*, pp. 83-101). Pertinent parts of Section 2 of the Organic Act, and of the Puerto Rican Income Tax Law and the three amendatory Acts of 1941, are also in the margin of the opinion of the Circuit Court of Appeals (R. 53-62).

The case revolves about the applicability, retroactively for the year 1940, and the validity, of amendments to the Income Tax Laws of Puerto Rico made by Acts of the Legislature, No. 31 of April 12, and No. 159 of May 13, 1941, at the Regular Annual Session of that year,[1] as further amended by Act No. 23, November 21, 1941, at the following Special Session.[2]

Act No. 31 of April 12, as amended a month later by Act No. 159 of May 13, changed the theretofore existing Income Tax Law of Puerto Rico,[3] by:

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[1] Laws of Puerto Rico, 1941, pp. 478-540, and 972-982, respectively, pertinent paragraphs in Appendix, *infra*, pp. 92-101.

[2] Laws of Puerto Rico, Special Session, 1941, pp. 72-90.

[3] The "Income Tax Act of 1924", Act No. 74, approved August 6, 1925; Laws of 1925, pp. 400-550, as subsequently amended [but not theretofore in any way material here, prior to the Acts of 1941 here in question].

(1) Increasing [Sec. 12-(a)] the "normal tax" on "every person a resident of Puerto Rico" to eight per cent (8%) per annum; but (2) Providing, *as an exception*, "except that in case of an *American citizen*, resident of Puerto Rico" the rate on the first $3,000.00 shall be three (3%) per cent, and *then upward, progressively, on a sliding scale* for amounts above $3,000.00; (3) Increasing the "normal tax" on persons not residents of Puerto Rico to ten (10%) per cent per annum, but again with (4) *an exception*,— "except that in the case of non-residents who are *American citizens* the normal tax shall be eight (8%) per cent on the net income"; (5) Providing *double taxation* on profits from partnerships and on dividends received by shareholders of corporations:[1] and further (6) By requiring[2] a joint return from " a husband and wife living together," covering the total income of both, and that:

> "the normal and additional tax shall be computed on the aggregate income. The net or gross income received by any one of the spouses shall not be divided between them";

thus directly reversing the prior provisions of Section 24(b) of the Act of 1924, which had been in force up to that time, and which permitted husband and wife living together to elect either that each should make an individual return or that they should make a joint return, as they saw fit; but (7) *without amending*, or even mentioning, the old estab-

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[1] Sec. 12-(a); "*Provided*, That said normal tax may also be assessed and collected on the income received by shareholders for dividends", thus expressly repealing the credit theretofore allowed against the normal tax of amounts received as partnership profits or dividends [Income Tax Act of 1924, Sec. 18-(a)], upon which the partnership or the corporation has already paid the tax.

[2] By Section 13, amending Secton 24(b) of the prior Income Tax Act of 1924.

lished provisions of the Civil Code and of the Political Code of Puerto Rico[6] embodying the community property system in Puerto Rico, under which the wife has an independent property right in one-half of the community property [although the husband is the manager of the property], which the Legislature has no power to change or to amend indirectly, or by implication, in view of the provision of Section 34 of the Organic Act[7] dealing with the amendment of insular statutes.

(8) The tax on corporations and partnerships (Sec. 28) was increased to a flat rate of 19%; but again (9) *with an exception:* "except that domestic corporations and partnerships shall pay a tax of seventeen (17) per cent".

(10) Corporations were defined as including [Sec. 2-(a)-(2)] also

> "in addition to other similar entities, any organization created for the purpose of carrying out operations, or accomplishing certain ends, and which, in like manner as corporations, may continue to exist regardless of the changes in the membership thereof, or in the persons sharing therein, and whose business is managed by one person alone, a committee, a board, or any other organization acting in a representative capacity"; and

(11) the definition of the term "partnership" was extended [Sec. 2-(a)-(3)] so that "it shall include, further, two or more persons, under a common name or not, engaged in a joint venture for profit."

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[6] Civil Code of 1930, Secs. 91-95, 252, 1267-1268, 1295, *et seq.*; Appendix, *infra* pp. 84-89. Political Code, Sec. 290. Code of Civil Procedure, Sec. 248; Appendix, *infra*, pp. 91-92, 89.

[7] "Jones Law", Act of March 2, 19-17, c. 145, 39 Stat. 951, 962, Par. 9, Sec. 34:

"No law shall be revised, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revised, amended, extended, or conferred shall be reenacted and published at length."

(12) The first paragraph of Section 18 of the former law[8] which had allowed individuals credits against the normal tax for amounts received as partnership profits or as dividends, was completely stricken out; and (13) The Act of April 12, 1941, the first of these Acts, also redefined partnership "earnings" as including [Sec. 4-(a)]

> "any share or right to share in a partnership, which belongs to its partners or participants in each taxable year out of the earnings or profits of any partnership" [*i.e., whether or not distributed to the partners*].

(14) The Act of April 12, 1941 [not changed in this respect by that of May 13] provided (Sec. 2) by its amendment of Section 3 of the former law of 1924 that:

> "Section 3.—(a) * * * The first taxable year, for the purpose of this Act, shall be the calendar year 1940, or any fiscal year ending during the calendar year 1940."

But the third of these Acts, Act No. 23 of the Special Session, approved November 21, 1941, some six months later, but during the same calendar year 1941, by its Section 1 [Laws of 1941, Special Session, p. 74], further amended that same Section 3 of the former Act, so as to provide that *the first taxable year*, "for the purposes of this Act" *shall be the calendar year 1941*,—instead of the year 1940. —this provision reading as follows in the November Act:

> "Section 3—(a) * * * The first taxable year, for the purposes of this Act, shall be the calendar year 1941, or any fiscal year ending during the calendar year 1941."

(15) The Act of April 12, the first of these 1941 Acts, also *very sharply increased*,—by amendment of Section 13 of the

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[8] Sec. 18 (a), Act of 1925, *supra*, Laws of 1925, at p. 446; which had provided, under the caption *"Credits Allowed Individuals"*;

"Section 18.—For the purpose of the normal tax only there shall be allowed the following credits:

(a) The amount received as partnership profits or dividends * * *"

former Income Tax Act,—*the surtaxes*, on a sliding scale. The Act of May 13 did not change this; but the Act of November 21 again very sharply increased them.[9]

The aggregate cumulative effect of the changes, as applied by the Treasurer, retroactively, to the tax liability of an alien resident in Puerto Rico, a married man living with his wife, was, in the case of the present petitioner,[10] *an increase of six hundred twenty-three* (623%) *per cent.*[11]

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[9] Act No. 31, Laws of 1941, at p. 848; Act No. 159, Laws of 1941, pp. 972-974; Act. No. 23, Laws of 1941, Special Session, pp. 72, 74-78.

[10] A native of Spain; since then became a naturalized citizen of the United States; but during the year 1940 still a citizen of Spain and hence an alien resident of Puerto Rico.

[11] But even this does not, however, in fact, measure the full extent of the actual increase in the income taxation against this petitioner, for the calendar year 1940, if these amendatory Acts of April 12 and May 13, 1941, are to be considered as valid and as being actually retroactive so as to include the calendar year 1940; because in that case, not only is the petitioner to be subjected to taxation, as his return was "reliquidated" by the Treasurer, upon the amounts of money he received that year, as shown by his March 15, 1941, return (R. 4-5), both upon his dividends from the Puerto Rico domestic corporations, the Banco Popular and the Plata Sugar Company, and also upon the partnership profits he received from Ballester Hermanos, which had themselves of course already been taxed at the lower income tax rates on corporations and on partnerships then in effect, in 1940, under Section 28 of the Income Tax Law of 1924 then in force; but also, if these 1941 Acts are valid and are retroactive back to 1940, then the higher rate must be applied also against the corporations and the partnership, and their taxes must be likewise "reliquidated" and correspondingly increased above what they had actually already paid for that calendar year; and so the calculations of the dividends and of the partnership profits, respectively, then accruing and paid by them to the petitioner, must be recast, and the differences must in some way be charged back to him in the end,—thus, for practical purposes, once again further increasing his own taxes, even beyond and above the 623% increase which, even without this recalculation of the dividends and partnership profits, the insular Supreme Court noted his taxes had already been increased (R. 35) over those due from him for the year 1940 under the former law then in force.

## Statement of the Case.

This case is here upon an "Agreed Statement of the Case" under Section 12 of Rule 14 of the Circuit Court of Appeals for the First Circuit filed in the Supreme Court of Puerto Rico on June 16, 1943, and approved by that Court on June 21, 1943 (R. 2, *et seq.;* 44). The case originated in an appeal by this petitioner to the Court of Tax Appeals from an "administrative decision[12] of the Treasurer of Puerto Rico embodied in a notice to petitioner, August 18, 1941, "reliquidating" his income taxes for the year 1940, which he had already paid in full upon filing his income tax return on the preceding March 15, 1941, in strict accordance with the law then in force. The Treasurer's notice (R. 2-3) advised him that his 1940 tax:

> "has been reliquidated by this Department in accordance with the provisions of Act No. 31 approved April 12, 1941, and Act No. 159, approved May 13, 1941, which amend with retroactive effect to January 1, 1940, the Income Tax Act No. 74, of August 6, 1925, as it has been susbequently amended, considering the original net income reported in your aforesaid return,"

so as to increase his 1940 tax from the amount of $454.39 [which, added to his wife's tax, paid in a similar amount, made an aggregate of the taxes for husband and wife, under the law then in force, of $908.78],—correctly paid by him on the preceding March 15th in accordance with the law then in force,—[as it had been during the whole of the taxable year 1940, and still remained in force at the time the return was made and the tax was paid on March 15, 1941],—up to the amount of $6,070.49, thus leaving a balance still due from petitioner, as the Treasurer calculated it (after crediting him the amount of his wife's taxes

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[12] So denominated by the Treasurer; letter September 10, 1941, to this appellant; quoted in the first opinion of the Supreme Court of Puerto Rico in this case, July 23, 1942 (60 P. R. Dec. 768, 771.

already paid, as though they had been paid as a part of his), of $5,667.71, for which the Treasurer demanded payment.

The Court of Tax Appeals dismissed petitioner's appeal, for want of jurisdiction (R. 6); but was reversed by the Supreme Court of Puerto Rico in certiorari proceedings, and directed to hear and decide the case on its merits (R. 6; *Ballester* vs. *Court of Tax Appeals*, 60 P. R. Dec., 768, 782-783. Thereafter the Court of Tax Appeals decided the appeal on the merits, against petitioner, upholding the validity of the Legislature's Acts of 1941 here in question, in every way, and their retroactivity back to January 1, 1940, thus including the taxable year 1940; and approving the Treasurer's calculation of the "reliquidation", retroactively, of petitioner's 1940 tax. "Each and every one of the questions submitted for consideration were decided against the petitioner, and the tax imposed by the Treasurer of Puerto Rico was upheld." ("Agreed Statement", *supra*, R. 6.)

**Opinion of the Insular Supreme Court.**

(1) On petitioner's further appeal to the insular Supreme Court, that court (Opinion, R. 8-39) upheld the validity of the 1941 Acts of the Legislature, and their retroactivity back to January 1, 1940 (thus including the taxable year 1940 here in question), and the Treasurer's action in "reliquidating" petitioner's tax for that year; and therefore affirmed the judgment of the Court of Tax Appeals, *except in one respect*. The insular Supreme Court, noting (Opinion, *supra;* R. 24-29) that:

> "During 1940 the petitioner was an alien residing in Puerto Rico. He complains that Section 1 of Act No. 159, Laws of Puerto Rico, 1941, in providing for a higher rate of taxation on the income of a resident alien than on the income of a resident citizen, is violative of the equal protection clause of the Organic Act;"

held that (R. 28-29):

> "this discrimination against aliens violates not only the equal protection provision of our Organic Act, which is a generic clause, but also the more specific *proviso* 'That the rule of taxation in Puerto Rico shall be uniform'."

The insular Supreme Court did not, however, because of such invalidity of the *exception* in favor of "American citizens" contained in the *excepting* clause inserted in Section 12(a) of the Income Tax Act by Section 1 of Act No. 159 of May 13, 1941, *supra*,[13] either (1) simply strike down that *excepting clause*, so as to leave in effect the general eight (8%) per cent rule announced by the first clause of Section 12(a) as thus amended by that Act of May 13, 1941[14], or else (2) strike down the entire section because of the manifest improbability of the Legislature's having intended to extend the broad general rule announced in the first clause of the section to all residents of Puerto Rico, irrespective of nationality, thus imposing on everyone the eight (8) per cent normal tax; but, instead, the insular Supreme Court held (R. 29) that the only effect of striking down the *excepting* clause was to reduce the resident alien's tax to "the same rate as that of resident citizens",—that is to say, in effect, to *extend the exception to everyone*, instead of striking it down entirely because of its manifest invalidity.

In other words, the effect of that Court's ruling on this point was *to strike down the general rule of the normal tax* announced in the first clause of the section, *and to substitute for it*, as the general rule, *the very exception* in favor of American citizens *which the Court had found discrimina-*

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[13] Laws of Puerto Rico, 1941, at p. 974; Appendix, *infra*, p. 94.

[14] "Section 12.—(a) There shall be levied, collected and paid for each taxable year on the net income of every person a resident of Puerto Rico a normal tax of (8) per cent of the amount of the net income in excess of the credits provided in Section 18". (Laws of P. R., 1941, *supra*, at p. 974; Appendix, *infra*, p. 94.

*tory* and violative of the Constitution and of the Organic Act.

In support of that holding the insular Court (R. 29) relies upon the prior decision of the Circuit Court of Appeals for the First Circuit in *San Juan Trading Co.* v. *Sancho, Treasurer*, 114 F. (2d) 969, 975.[15]

(2) The insular Court, after a long discussion ("Opinion", R. 8-20) of the applicability and effect of the community property laws of various States of the Union, with reference to the question of making joint or several income tax returns for a husband and wife living together[16] upholds

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[15] But apparently without noticing the radical difference in this respect between the statute there involved, and that here in question. (*Confer, infra*, pp. 72-75.)

[16] Discussing largely questions of policy; "Feminist organizations * * *. Some organizations * * * as a matter of high principle * * *. Those who have fought * * * simply a product of the economy reality * * *, *et seq.* (R. 8-9 *et seq.*)

It seeks to distinguish and declines to follow (R. 15, 16-19) the decision of this Court in *Hoeper* v. *Wisconsin*, 284 U. S. 206, 213-218, as well as those in *United States* v. *Malcolm*, 282 U. S. 792, 794, and its companion cases, *Poe* v. *Seaborn*, 282 U. S. 101, 109-18; *Goodell* v. *Koch*, 282 U. S. 118, 120-121; *Hopkins* v. *Bacon*, 282 U. S. 122, 125-126; and *Bender* v. *Pfaff*, 282 U. S. 127, 130-132.

The insular Court says in this connection, with particular reference to *Hoeper* v. *Tax Commission, supra*, 284 U. S. 206, that (R. 16):

> "We recently went through a somewhat laborious process to distinguish a United States Supreme Court tax opinion which was shortly thereafter overruled. (Compare *Piacentini* v. *Buscaglia, Treas.*, 59 P.R.R. [59 P. R. Dec. (Spanish text), 767], with *State Tax Comm'n* v. *Aldrich*, 316 U. S. 174). Whether that process will be repeated in the present situation is not for us to say. Impartial commentators of wide repute have expressed views to that effect."

It then proceeds (R. 16-20) to discuss opinions of text writers, and magazine artices, and dissenting opinions, tending to throw doubt upon the soundness of the decisions of this Court in those cases, concluding as above indicated that (R. 20) those decisions of this Court are not to be followed in

(R. 20) the provision of Section 13, as amended by the Act of April 12, 1941, *supra*, for a single return covering the whole income of both husband and wife; holding also, specifically, that it "is not invalid in its application to the income reported by the petitioner and his wife for 1940."

(3) The Court then holds (R. 21-23) that the provisions for "sliding scale" progressive rates, both for the normal tax and also for the surtax, do not violate the requirement of Section 2 of the Organic Act, "That the rule of taxation in Puerto Rico shall be uniform", nor the requirements of that Section of "due process of law," and of "equal protection of the laws", saying (R. 22):

> "In construing an insular taxing statute, our Circuit Court of Appeals has said that if 'the act applies equally in all parts of Puerto Rico, and all * * * in each class are treated the same * * * the tax is not obnoxious to the uniformity clause * * *,' of the Organic Act. (*San Juan Trading Co.* v. *Sancho*, 114 F. (2d) 969, 972.) As the statutes involved herein do not provide for different rates of taxation at different places within Puerto Rico but provide only for higher rates at higher income levels, we find no violation of the rule for uniform taxation in Section 12 and 13. Most of the cases cited by the petitioner, including *Domenech* v. *Havemeyer*, 49 F. (2d) 948, 52 (C. C. A. 1st, 1931) and *Loiza Sugar Co.* v. *Domenech, Treas.*, 43 P.R.R. 855, have no bearing on this particular problem. We have considered them carefully, but see no purpose in extending this opinion further by distinguishing them in detail."

And in considering this question the insular Supreme Court wholly failed to notice that this Court in its opinion in *Knowlton* v. *Moore*, 178 U. S. 41, 83-85, 87-88, speaking by MR. JUSTICE WHITE had expressly recognized, back on May 17, 1900, that the word "uniform", standing alone, un-

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this case; and ends the discussion of this point by upholding the provision of the April 12, 1941, amendment to Section 13, requiring a single joint return, and taxation upon that return, as upon a single unit.

qualified, in such a restrictive provision as the clause in Section 2 of the Organic Act here in question, enacted by the Congress seventeen years later, March 2, 1917, requires "*intrinsic*", "*inherent*" uniformity in taxation; not mere geographic uniformity; that (*Knowlton* v. *Moore*, *supra*, 178 U. S. at pp. 84, 87):

> "the word 'uniform' or the words 'equal and uniform' are now generally found in state constitutions, and as there contained have been with practical unanimity interpreted by state courts as applying to the intrinsic nature of the tax and its operation upon individuals."[17]

In fact the insular Supreme Court wholly fails to notice in any way,—even to mention,— this Court's decision in *Knowlton* v. *Moore*, at all.

(4) The insular Court then (R. 22-24) upholds the provision of the 1941 amendments eliminating the former credits against the normal tax to individual taxpayers for amounts of dividends and of partnership profits received by them, upon which the income taxes have already been paid by the corporation or by the partnership as the case might be. But in discussing this point, the Court wholly fails to consider (R. 22-24, *supra*) the effect of the provision of Section 2 of the Organic Act requiring, as above quoted, "That the rule of taxation in Puerto Rico shall be uniform"; and also wholly fails to take into consideration the effect of the widened definition of "partnerships" "for the purposes of this Act", prescribed in the April 12, 1941, amendment to Section 2 of the Income Tax Act, directing, as above quoted (*ante*, p. 4) that the term "partnership" shall include,—not only civil, business, industrial, agricultural and professional partnerships, as well as those of any other kind, "whether or not its constitution is set forth by public deed or private document", but also, in addition (Act No. 31, *supra;* Laws of 1941, at p. 480):

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[17] *Confer*, *infra*, Point I, pp. 38-39.

"it shall include, further, two or more persons, under a common name or not, engaged in a joint venture for profit."

The insular Supreme Court, apparently wholly failing to notice this provision, says (R. 24):

"But the term 'partnership' is not used in our Income Tax Act in the common law sense. It is a translation of the term '*sociedad*' found in the civil law."[18]

(5) The insular Court then (R. 24-29) considers the discrimination against aliens residing in Puerto Rico, in favor of resident citizens, made by the amendment to Section 12-a of the Income Tax Law by the second amendatory Act No. 159 of May 13, 1941, *supra* (Laws of 1941, at p. 974), in view of the fact that during 1940 petitioner "was an alien residing in Puerto Rico", and determines that this discrimination was beyond the power of the Legislature.[19]

It then, however (R. 28-29), as above indicated (*ante*, pp. 8-10), holds that the effect of this part of its decision,—instead of invalidating and striking down the discriminatory exception in favor of American citizens,—is, in effect, to *rewrite the main clause of the paragraph*, and to engraft upon the main clause itself what the Legislature had stated as an exception, thus converting the exception into the statement of the principal rule as to the normal tax.

(6) The Court then proceeds (R. 29-34) to consider the validity of the *retroactive provision* of the Act of April 12, 1941, amending Section 3 of the former Income Tax Law so as to make the amendments made in the law by that amendatory Act retroactive to and including the calendar year 1940 [the provision hereinbefore quoted; *ante* p. 5]. The Court upholds the validity of this retroactive provision, even with

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[18] *Confer infra*, pp. 60-64.

[19] Citing *Yick Wo* v. *Hopkins*, 116 U. S. 356, 369; *Truax* v. *Raich*, 239 U. S. 33, 42; *Ex parte Kawato*, 317 U. S. 69, 72-74; and *Edwards* v. *California*, 314 U. S. 160.

relation (R. 34) to the retroactive requirement of a single return for husband and wife as to the income from the community property.

(7) Finally the insular Court (R. 35-39), adverting to the 623% increase made in the Treasurer's "reliquidation" of petitioner's 1940 tax, considers at some length whether or not these amendatory Acts of 1941 are "confiscatory", and therefore deprive petitioner of his property without "due process of law", as he contended in that Court.[20] Overruling that contention, the insular Court nevertheless says (R. 39:

> "Lest we be misunderstood, we add that we do not hold nor do we intimate that there is no limit beyond which income taxation cannot go. We hold only that this is a question of degree, and that, under all the recited circumstances, the case before us does not fall on the wrong side of the line. (See dissent of MR. JUSTICE HOLMES, *Louisville Gas Co.* v. *Coleman*, 277 U. S. 32, 41)."

**Additional Facts.**

1. The Treasurer's "reliquidation" of petitioner's return of March 15, 1941, of his income for the calendar year 1940, shows (R. 4-5) that the principal part of it was derived from (a) dividends from two domestic corporations of Puerto Rico, the Banco Popular and the Plata Sugar Company, and (b) profits received from a partnership, Ballester-Hermanos, all of which were exempt in his hands from the normal tax, under the former law, the policy of which was to avoid double taxation; because both the corporations and the partnership had been themselves taxed under that law on those same profits,—[as they are likewise taxed, but at a higher rate, under the 1941 amendments].

2. And again,—because during the whole year 1940 petitioner was a married man, living with his wife, and all of this income was community property under the laws of Puerto Rico,—he and his wife had properly made separate

[20] And in the Circuit Court of Appeals as well; and now contends here. (*Confer, infra*, pp. 28-30, 78-81).

returns under that law, on March 15, 1941, of their 1940 incomes, respectively, sharing (and dividing) this community property income between them, half and half. The Treasurer's "reliquidation" of those returns, treating the entire amounts of both of them, added together, as the single income of the husband alone,—and therefore putting it into much higher brackets under the sliding scale provisions of the 1941 amendments for both the normal tax and the surtaxes,—increased the tax astronomically.

3. There were also submitted in evidence[21] figures in the annual reports of the Auditor of Puerto Rico for the years 1939, 1940, and 1941, showing (R. 5-6),

> "at the closing of the books on June 30, 1939, an excess over disbursements amounting to $99,510.30; an excess over disbursements amounting to $1,444,139.20 at the close of the books on June 30, 1940; and an excess over disbursements amounting to $4,404,557.09, as of June 30, 1941."

4. The annual budget of the insular government for the fiscal year ending June 30, 1939, totaled $14,223,510.14 (Budget; Act. No. 324, of May 15, 1938; Laws of 1938, pp. 571, 708). The annual budget for the fiscal year ending June 30, 1940, totaled $13,929,091.58 (Act No. 184, approved May 15, 1939; Laws of 1939, pp. 923, 1204); and that for the year ending June 30, 1941, totaled $14,252,544.89 (Annual Budget, Act. No. 173, approved May 15, 1940; Laws of 1940, pp. 1000, 1288).

5. And for the following fiscal year, the one ending June 30, 1942, the annual budget enacted at the same regular annual session of the Legislature at which both of the two amendatory acts to the Income Tax Law, Acts Nos. 31 of April 12, and 159 of May 13, 1941, here in question, were enacted, totaled $15,612,340.04 (Act No. 179, approved May 14, 1941, Laws of 1941, pp. 1068, 1356), *plus* a supplemental

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[21] Although the Court could have taken judicial notice of them.

budget (Act No. 180, approved May 14, 1941, Laws of 1941, pp. 1358-1376), containing various items amounting to $437,034.48, thus making, together with the annual budget above, an aggregate budget for that fiscal year ending June 30, 1942, of $16,049,374.52,—an aggregate increase over the budget for the preceding fiscal year ending June 30, 1941, above, of only $1,796,829.63.[22]

**Opinion of the Circuit Court of Appeals.**

The Opinion of the Circuit Court of Appeals of April 5, 1944, (R. 52-69; 142 F. (2d) 11), after stating the case, and the principal provisions of the insular statutes involved, deals *seriatim* with the questions presented.

1. It refers to the decisions of this Court upon the taxability of income from community property,[23] earlier decisions of the insular Supreme Court, and Spanish commentators on the Civil Code, and to the rule of this Court

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[22] As against an accrued surplus or excess of collections over disbursements for the fiscal year 1940-1941, as above, of $4,404,557.09 (R. 5-6, *supra*), collected under the former Income Tax Law which remained in force during the entire calendar year 1940 and under which the returns for that year were made on March 15, 1941,— together with the property taxes and excise taxes and other sources of revenue, none of which were reduced by the laws of 1941. Indeed, some of the excise taxes were substantially increased (Act No. 158, approved May 13, 1941, Laws of 1941, pp. 948-972; the same day on which Act. No. 159 was approved, the second of the above amendatory acts of the Income Tax Law, here in question).

[23] *United States* v. *Robbins*, 269 U. S. 315 [1926]; *Poe* v. *Seaborn*, 282 U. S. 101, 109-118 [1930; with its companion cases, *infra*, p. 68]; together with *Hoeper* v. *Tax Commission of Wisconsin*, 284 U. S. 206 [1931].

And *confer* also the recent decision of this Court in *Flournoy* v. *Wiener*, 321 U. S. 253, 254 *et seq.*, declining to review, for lack of jurisdiction on that appeal, the decision of the Louisiana Supreme Court in that case (203 La. 649; 14 So. (2d) 475; June 21, 1943). See also, Article, "Federal Estate Taxation and the Wiener case", by former District Judge George Donworth, in the April, 1944, issue of the Washington [State] Law Review (Vol. XIX, pp. 49-71).

of the respect to be paid to decisions of the insular Supreme Court on questions purely of local law,—and then, with relation to that part of the insular Supreme Court's opinion holding that, although under the law of Puerto Rico the wife's interest in the community property is such that, as the insular Court phrased it (R. 13):

> "* * * 'we do not doubt in reality that the interest of the wife is something more than a mere expectancy * * *.' (54 P. R. R. 651, 654-655). In the case before us we are not passing on the nature of the wife's rights as a matter of property law in particular situations. It is therefore not necessary for us in a taxation case of this sort to go further than to say that the wife during coverture does not have a vested right. * * * Saying that 'the interest of the wife is something more than a mere expectancy' does not go so far as to call the wife's interest a vested one, and that is the only question before us at this time",

the Circuit Court of Appeals says (R. 62):

> "We may reverse a judgment of the Supreme Court of Puerto Rico on a question of local law only if that judgment is 'inescapably wrong'. * * * "Since this is a matter of local law * * *, we need go no further than to say that the judgment is not inescapably wrong."[24]

2. The Circuit Court of Appeals then upholds (Opinion R. 64-65) that part of the insular Court's opinion

[24] But this question is not purely one of local law; but is primarily a federal question, of the power of the Legislature under the Organic Act of Congress for Puerto Rico, and under the Fifth Amendment, and the decisions of this Court, to levy an income tax against the husband on the wife's half share in the community property; and whether or not, within the meaning of the decisions of this Court on that subject, any distinction can be made, as to the degree of the wife's ownership in the community property, between its being "*in reality, * * * something more than a mere expectancy*" [the insular Supreme Court's language, above: R. 13], and being "vested" [this Court's phrase, in *Poe* v. *Seaborn*, 282 U. S. 101, 109-110, and companion cases, cited *infra*, p. 68]

which had held that the requirement of Section 2 of the Organic Act for Puerto Rico, "That the rule of taxation in Puerto Rico shall be uniform" requires only "geographical uniformity" throughout the Island, in the same manner, only, as does the provision of the first clause of Section 8 of Article I of the Constitution which provides that "the Duties, Imposts and Excises shall be uniform *throughout the United States*" [*Italics supplied*]; which this Court decided in *Knowlton* v. *Moore*, 178 U. S. 41, 84 *et seq.*, requires only geographical uniformity throughout the United States—and not "inherent or intrinsic uniformity". The Circuit Court recognizes (R. 64) that this Court's decision in *Knowlton v. Moore*,

> "was based in part on the words 'throughout the United States' which do not appear in the similar provision in the Organic Act";

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It is believed that no such distinction can properly be said to exist; and that within the meaning of this Court's decisions, the wife's interest in the community property must be considered to be,—for the purposes of the determination of this constitutional question,—either: (1) A "mere expectancy", as the California courts formerly held that it was, under the former statutes of that State (*United States* v. *Robbins, supra*, 269 U. S. 315 [1926]), now superseded by the later amendment to the California Code; or else (2) Something more than a "mere expectancy",—that is to say, some form of *ownership*; *and that any such ownership* is something *"vested"* within the meaning of this Court's decisions in *Poe* v. *Seaborn, supra*, 282 U. S. 101, 109-118; *Goodell* v. *Koch*, 282 U. S. 118, 120-121; *Hopkins* v. *Bacon*, 282 U. S. 122, 125-126; *Bender* v. *Pfaff*, 282 U. S. 127, 130-132; and *United States* v. *Malcolm, supra*, 282 U. S. 792, 794.

There can be no middle ground. Either the wife's interest is a mere "expectancy", that is to say no ownership at all; or else it is ownership, something "vested".

[See our discussion, *infra*, pp. 65-71.]

The question is not one of local law; and cannot properly be disposed of by simply treating it as such, and avoiding discussion of the insular Supreme Court's plainly erroneous opinion, on that ground.

but says (*ib.*, R. 64):

> "that was merely one ground for the decision[25]";

and that (R. 64):

> "The Supreme Court said, p. 92: " 'But, one of the most satisfactory answers to the argument that the uniformity required by the Constitution is the same as the equal and uniform clause which has since been embodied in so many of the state constitutions, results from a review of the practice under the Constitution from the beginning. From the very first Congress down to the present date, in laying duties, imposts and excises, the rule of inherent uniformity, or, in other words, intrinsically equal and uniform taxes, has been

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[25] The Circuit Court thus ignores what appears to be the plain fact,—viz., that MR. JUSTICE WHITE'S careful examination of the significance of the presence of those words, "*throughout the United States*" in the Constitutional provision, and of the history leading up to the Constitutional Convention's including them in it, there in that place in Section 8 of Article I,—indicating their meaning in that connection, particularly in view of their relationship to the kindred provision in Clause 6 of Section 9 of Article I forbidding preferences in favor of the ports of one State over those of another; and his careful pointing out that to treat that Constitutional provision as though it read simply "shall be uniform," without these additional words, would be wholly to disregard these significant words of the Constitution, "*throughout the United States*", and to treat them as of no meaning whatever,—*was the very meat of the decision* of this court in *Knowlton* v. *Moore*, which expressly recognized that the word "uniform", if standing alone without qualification, would require "intrinsic or inherent uniformity", as it had been "uniformly" construed to require when so used in State Constitutions;—[and as it was afterwards used by the Congress in Section 2 of the Organic Act for Puerto Rico here in question, which requires, without any qualification whatsoever, "That the rule of taxation in Porto Rico shall be uniform". [See further, *infra*, pp. 36-57].

disregarded, and the principle of geographical uniformity consistently enforced.[26]' "

The Circuit Court (R. 65) then proceeds, [*plainly erroneously as it is believed*],—to construe its earlier decisions in *San Juan Trading Co.* v. *Sancho Bonet, Treasurer, supra*, 114 F (2d) 969; *Gallardo* v. *Puerto Rico Light and Power Co.*, 18 F (2d) 918; and *Domenech* v. *Havemeyer*, 49 F. (2d) 848, 852, as not in conflict with its present decision in this case.

3. And from that holding that the requirement of Section 2 of the Organic Act that the rule of taxation in Puerto Rico shall be "uniform", does not extend to requiring inherent or intrinsic uniformity in taxation, but only "geographic uniformity" throughout the Island, it easily followed (R. 66-67) that the Circuit Court likewise followed the opinion of the insular Supreme Court in respect to its holdings that the provisions of the 1941 Acts here in question imposing *double taxation* on dividends from corporations and on

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[26] The Circuit Court of Appeals, however, in making ths quotation from this Court's opinion in *Knowlton* v. *Moore*, plainly ignored the fact that MR. JUSTICE WHITE was there expressly dealing with the qualifying effect of the significant phrase "throughout the United States", as having been, as a matter of history, from the very beginning of our Government, recognized as differentiating the meaning of that provision of Clause 1 of Section 8 of Article I of the Constitution concerning "Duties, Imposts and Excises" from what it would have been if it had contained simply the unqualified word "uniform", and if it had not been qualified by the modifying phrase "throughout United States".

The point of MR. JUSTICE WHITE'S argument, quoted by the Circuit Court of Appeals, is, in reality, plainly *the exact opposite* of the inference which the Circuit Court's opinion seeks to draw from it. So far from minimizing the effect of the qualifying phrase *"throughout the United States"*. MR. JUSTICE WHITE strengthens the effect of the presence of this qualifying phrase in the Constitutional provision, by the historical considerations which he notes, emphasizing the difference, which from the very first, the presence of this qualifying phrase had been considered to make in the Constitutional provision. [See further, our argument on this point, *infra*, pp. 40-42].

profits from partnerships,—as well as imposing the progressive graduated scales of income taxes both for the normal tax and also for the excess or surtaxes,—are all alike within the powers of the Legislature of Puerto Rico.

4. The Circuit Court of Appeals also (R. 65) upholds the insular Supreme Court's holding that notwithstanding the admitted invalidity of the provision of Section 1 of the amendatory Act No. 159 of May 13, 1941, amending Section 12 of the Income Tax Law so as to provide for a higher rate of taxation on the income of a resident alien than on the income of a resident citizen,—plainly violative alike of the "due process" and of the "equal protection" clauses of Section 2 of the Organic Act as well as also of (R. 28-29),

> "the more specific *proviso* 'That the rule of taxation in Puerto Rico shall be uniform' ",

nevertheless, the validity of the balance of that Section of this amendatory Act may be sustained by simply *inverting it*, and substituting the [*invalid*] *exception* for the main taxing clause; even though the Circuit Court itself recognizes (R. 66);

> "Although with the invalid part separated the statute does not make good grammatical form".

But the Circuit Court says, nevertheless (R. 66):

> "it is obvious that the construction by the Court below is what the Legislature would have intended had it foreseen the invalidity[27]".

The Circuit Court also treats this as a question of local law (R. 66), within the meaning of this Court's rule of the respect to be accorded to decisions of the insular Supreme Court upon purely local questions.

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[27] But this is mere *guessing* on the Circuit Court's part, as it was on the part of the insular Supreme Court; and is in essence an exercise of legislative power, beyond the province of any court. [See *infra*, pp. 72-75].

Petitioner submits, to the contrary, that this is not at all a question of purely local law; but is a question of federal law, as to the powers of the Legislature functioning under the Organic Act of Congress; and is to be decided in accordance with the decisions of this Court as to the scope or extent of the judicial power to uphold the validity of a statute found to be invalid in part.

5. The Circuit Court also upholds (R. 67-68) the insular Supreme Court in its decision that the change made by the last one of the series of amendatory Acts in 1941, Act No. 23 of the Special Session, November 21, 1941, changing the provision of Section 3 of the Income Tax Act so as to make its effective date January 1, 1941, instead of January 1, 1940, did not thereby affect or change in any way the retroactivity of the Act back through 1940, as it had been amended to read by the earlier amendatory Act No. 31, of April 12, 1941. And the Circuit Court of Appeals says that this construction of the Act, by the insular Supreme Court, cannot be said to be "unsupported by logic or reason", and therefore that it is not to be disturbed by the Court of Appeals.

[Petitioner submits, to the contrary, that this part of the insular Supreme Court's decision is "inescapably wrong", and is not purely a question of local law; *infra*, pp. 28-30, 75-78].

6. Finally the Circuit Court of Appeals agrees with that portion of the insular Supreme Court's opinions which had held—(although with some apparent hesitation),—that the tremendously increased taxes laid by these amendatory Acts of 1941, with their double taxation of corporation dividends, and of partnerships, and their novel attribution of the entire income of the conjugal partnership to the husband alone for the purpose of thus astronomically increasing the taxation of husband and wife, living together, though the operation of the high brackets of the progressive normal and surtaxes,—could not be held to be confiscatory; and concluded (R. 69) by affirming the insular Supreme Court's judgment.

## Questions Presented.

**Question 1. Does the requirement of the 22nd paragraph of Section 2 of the Organic Act of Congress for Puerto Rico (39 Stat. 951, 952), "That the rule of taxation in Porto Rico shall be uniform", require inherent or intrinsic uniformity in local taxation, or does it require only geographical uniformity throughout the Island?**

The insular Supreme Court, affirmed by the Circuit Court of Appeals, holds that the requirement is only of geographical uniformity throughout the Island. The Circuit Court of Appeals bases its holding on its understanding of the opinion of this Court in *Knowlton* v. *Moore*, 178 U. S. 41 (particularly at p. 92) [R. 64].

Petitioner submits, to the contrary, that the lower courts are wrong in this; that this paragraph of Section 2 of the Organic Act should be held to require that the rule of taxation in the Island be *intrinsically* "uniform"; and that the decision of the Court of Appeals is based upon a misinterpretation and misapplication of the opinion and decision of this Court in *Knowlton* v. *Moore*. [Point I, *infra*, pp. 36-46].

**Question 2. Does the Legislature of Puerto Rico possess the power to levy graduated income taxes on progressive sliding scales, taxing higher incomes at progressively higher percentage rates; and are the provisions of the Acts of the Legislature of 1941 here in question, levying such taxes, valid?**

The answer to this question depends on the answer to Question 1. If the answer to Question 1 is that Section 2 of the Organic Act requires that the rule of taxation be *intrinsically* "uniform" in Puerto Rico, then plainly,—[and we may say, admittedly; no one has questioned it],—the Legislature is without power to levy such progressive taxes on a graduated scale [*Knowlton* v. *Moore*, *supra*, 178 U. S. 41, 83-85, 87-88]; since, in the phraseology of Mr. Justice White in that case, such a tax—

"does not fulfill the requirement of equality and uniformity, as those words are construed when found in State constitutions".

But, on the other hand, if the requirement of Section 2 of the Organic Act is to be construed as being only, as the lower Courts have held it to be, as above indicated, of simple "geographic uniformity throughout the Island," then apparently the Legislature may possess such power, subject to the requirements of "due process of law" and of "the equal protection of the laws," of the Fifth Amendment and of the first paragraph of Section 2 of the Organic Act.

Petitioner submits as above indicated, that the holdings of the lower courts on this point are wrong; that the requirement of Section 2 of the Organic Act is of actual intrinsic or inherent uniformity in taxation; and that, therefore, the Legislature is without power to levy income taxes or excess profits taxes at graduated progressive rates; and that it is for the Congress, and not for the courts or the local Legislature, to determine whether or not this restrictive rule of the Organic Act should be changed in any way. [Point II, *infra*, pp. 47-57].

**Question 3. Does the Legislature of Puerto Rico possess the power to levy double taxation upon stockholders of corporations organized or doing business in the Island, by taxing both (a) the income of the corporation, and then also (b) the dividends paid to the stockholders after the corporation has already paid the income tax on its profits before distributing the dividends? And hence are the provisions to that effect, in the 1941 Acts here in question, valid?**

The answer to this question, like the answer to the preceding question, depends on the answer to QUESTION 1. If, as the lower courts have held, the requirement of Section 2 of the Organic Act that the rule of taxation in Puerto Rico shall be "uniform", is a requirement, only, of "geographic

uniformity throughout the Island," then, apparently, the Legislature of Puerto Rico may in reality possess this arbitrary power of double taxation, and may exercise it in its discretion, as it has chosen to do here.

But if, on the other hand, as petitioner submits, as above indicated, that requirement of section 2 of the Organic Act is really a requirement of *intrinsic or inherent uniformity* in taxation, then it necessarily follows that the Legislature possesses no such arbitrary power of discrimination among taxpayers by such double taxation of stockholders in corporations, and that these provisions of the statutes here in question are beyond its legislative powers and void. [Point III, *infra*, pp. 57-59].

**Question 4. Does the Legislature of Puerto Rico possess the power to levy double taxation on members of partnerships in the Island by taxing both the partnership itself upon its earnings or profits and also afterwards the individual partner upon the share of the profits accruing to him after payment of the partnership tax, as is done by the Acts of 1941 here in question?**

This question is similar to the last; and its answer likewise depends to a great extent [but not wholly] upon the answer to Question 1. For the same reasons indicated with relation to the preceding question, petitioner believes and submits that the lower courts were wrong in upholding the sections of these statutes levying such double taxation on partners; that such discrimination against them is violative of the requirement of the Organic Act of uniformity in taxation, and is therefore beyond the power of the Legislature.

But petitioner also submits that this is an *unreasonable classification unjustly discriminating against* members of partnerships, denying to them due process of law, and the equal protection of the laws; and that these provisions of those Acts are void, for all these reasons. [Point IV, *infra*, pp. 60-64].

**Question 5. Does the Legislature of Puerto Rico possess the power to levy the income tax against the husband alone, living with his wife, upon the entire aggregate income of the conjugal community, and thus, in effect, both: (a) to tax him upon property belonging to his wife and not to him, —viz., upon her share of the community income,—and thus to measure his tax by her income as well as his own, and also in effect (b) to tax her as well as the husband at an increased rate, under the progressive sliding scale putting higher incomes into higher percentage brackets of taxation, than that at which she would have been taxed directly upon her own income if taxed separately upon that; as well as (c) likewise, under the sliding scale, thus also taxing the husband himself at a higher percentage rate?**

Is not this in violation of the requirement of paragraph 22 of Section 2 of the Organic Act of uniformity in taxation, and also a denial of the equal protection of the laws and a taking of property without due process of law,—both from the wife and also from the husband,—in violation of the provisions of paragraph 1 of Section 2 of the Organic Act, and likewise of the Fifth Amendment to the Constitution?

The insular Supreme Court upheld the validity of the sections of the Acts here in question providing for such taxation of the husband on the basis of the entire conjugal community income. The Circuit Court of Appeals declined to disturb the decision of the insular Court on this point, considering it a decision on a question purely of local law, and not "inescapably wrong".

Petitioner submits: (1) That the insular Court's decision on this point was in reality "inescapably wrong"; and (2) That the question is not purely one of local law, and should not have been so disposed of by the Circuit Court of Appeals; that it is a question of federal law, of the power of the insular Legislature under the Organic Act and particularly under the restrictions contained

in paragraphs 1 and 22 of Section 2 of that Act of "due process of law", of "the equal protection of the laws", and of uniformity in taxation, and under the due process of law requirement of the Fifth Amendment; and that in view of those requirements, and of the community property laws of Puerto Rico as they have been recognized and interpreted by the insular Supreme Court itself, as constituting "*the conjugal partnership * * * in an identical or similar form to that*" existing in the community law States of the Union, and as giving to the wife "something more than a mere expectancy" in the community property,—and in view of the decisions of this Court in *Poe* v. *Seaborn*, 282 U. S. 101, and its companion cases, and in *Hoeper* v. *Tax Commission of Wisconsin*, 284 U. S. 206,—the Legislature of Puerto Rico is without any power,—[in the absence of any direct amendment of the community property laws],—so to levy an income tax against the husband alone, based on the entire aggregate conjugal community income; and that those provisions of the statutes here in question attempting so to levy such a tax, consequently, void: [Point V. pp. 64-72].

**Question 6. Does not the admitted invalidity of the exception contained in Section 12(a) of the Income Tax Act, as amended by Act No. 159 of May 13, 1941, one of the statutes here in question, discriminating in favor of American citizens residing in Puerto Rico as against resident aliens, invalidate that entire Section amending the rates of the normal income tax?**

The insular Supreme Court found this discriminatory *exception* void; but upheld the validity of the balance of the Section as a whole, *by transforming the invalid exception into the main clause of the Section*, so as in effect to make the Section read as though the discriminatory rate in favor of American citizens stated in the exception had been the rate originally enacted by the Legislature as the general rule, and as though there never had been any such exception,

thus *guessing* that that is what the Legislature would have done if it had realized the invalidity of the exception.

The Circuit Court of Appeals affirmed; partly on the ground that this was a decision by the local Court on a question of local law, and not "inescapably wrong."

Petitioner submits that this is not a question of purely local law; but is a question of federal constitutional law, of the construction of an Act of the Legislature acting under the authority of an Act of Congress, the Organic Act for the Island, in the exercise of powers thus delegated to it by the Congress as its agent; and that the decisions of both the lower courts on this point are plainly wrong, and contrary to the decisions of this Court, particularly this Court's decisions in *Spraigue* v. *Thompson*, 118 U. S. 90, 95; *Pollock* v. *Farmers Loan & Trust Co.*, 158 U. S. 601, 635-636; *Hill* v. *Wallace*, 259 U. S. 44, 71; *Dorchy* v. *Kansas*, 264 U. S. 286, 290; and *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 241-242. [Point VI, pp. 72-75].

**Question 7. Did not the later amendment to Section 3 of the Income Tax Act, by the November 21, 1941, Act No. 23 of the Special Session, so as to make the Act retroactive only to January 1, 1941, instead of back to January 1, 1940, as it had been made by the amendment to Section 3 made by the earlier amendatory Act No. 31 at the Regular Session, approved on April 12th of that year [not changed by the Act of May 13th], have the effect of amending the original Income Tax Act of 1925, of which the November 21 Act was declared by its terms to be an amendment, so as to supersede the earlier amendatory Act of April 12 in that respect, and thereby again to change the retroactivity of the Act so as to make it retroactive only back to the beginning of the calendar year 1941, as provided by the November Act, instead of further back through the calendar year of 1940, as had been provided by the April 12th amendment?**

And thereby to relieve this petitioner of the retroactive liability for additional income taxes for the

year 1940 charged against him by the Treasurer's "reliquidation" of his taxes under the April 12th amendment,—[although he had already paid the tax for that year 1940, in full on March 15, 1941, before the enactment of the April 12th amendment, and in strict accordance with the laws in force during the year 1940 and up to the time when he made his tax return and paid his tax on March 15, 1941]?

The insular Supreme Court answers this question in the negative, holding that the November Act's further amendment of Section 3 did not affect the retroactivity back through 1940 provided by the April 12th amendment.

The Circuit Court of Appeals affirmed, saying that the construction by the Puerto Rican Court cannot be said to be "unsupported by logic or reason".

The provision in the November amendatory Act reads (Laws of Puerto Rico, Special Session 1941, p: 74; R. 61):

> "*Be it enacted*, etc.
>
> "Section 1.—Subdivision (a) of Section 3 of Act No. 74, entitled * * *, approved August 6, 1925, as amended by Act No. 18 of June 3, 1927, Act No. 30 of April 26, 1932, Act No. * * *, Act No. 31 of April 12, 1941, and Act No. 159 of May 13, 1941, is hereby amended as follows:
>
> 'Section 3.—(a) The term "taxable year" means the calendar year, or the fiscal year ending during each calendar year, upon the basis of which the net income is computed under Sections 14 or 30. * * *. The first taxable year, for the purposes of this Act, shall be the calendar year 1941, or any fiscal year ending during the calendar year 1941.' "

The argument of the Circuit Court of Appeals is that (R. 68):

> "Where Sections 1 and 11 say: 'The first taxable year, for the purposes of this Act [the November Act], shall be the calendar year 1941 * * *' and '* * * *this* Act shall take effect from and after January 1, 1941,' (italics added)" [*by the Circuit Court*] "the words

'this Act' may well refer only to the present amending Act itself and not to the Act amended by it."

Petitioner submits that both of the lower courts are clearly wrong in this respect; that this not a question of local law, but of federal law, of the construction of a statute of the Legislature acting under the Organic Act of Congress and as an agent of the Congress; that the last above quoted argument of the Circuit Court of Appeals appears to be directly in conflict with the decision of this Court in *Posadas, Collector* v. *National City Bank*, 296 U. S. 497, 503-506; and that here the provisions of the November Act, amending Section 3 of the original Act of 1925, were clearly intended by the Legislature as amendments of the original Act, to speak as from the date of the original Act, and to be a substitute for the earlier amendments (including the one of April 12, 1941) in that respect, and to make the original Act read as retroactive only to the beginning of the 1941 calendar year. [Point VII, *infra*, pp. 75-78].

**Question 8. Were not the amendments made in the Income Tax Laws of Puerto Rico by these amendatory Acts of April 12 and May 13, 1941, here in question, considered as a whole, confiscatory, amounting really to an attempt to tax for assumed "general welfare" purposes, rather than to taxation for usual governmental purposes; and beyond the ordinary purposes contemplated in the taxing powers delegated by the Congress to the Legislature by Section 3 of the Organic Act for Puerto Rico?**

The insular Supreme Court recognized and discussed somewhat at length the seriousness of the question here involved; and, although upholding these statutes against that charge, the insular Court appears nevertheless to have done so with some hesitation, saying (R. 39):

"Lest we be misunderstood we add that we do not hold nor do we intimate that there is no limit beyond which income taxation cannot go. We hold only that this is a question of degree, and that, under all the re-

> cited circumstances, the case before us does not fall on the wrong side of the line."

The Circuit Court of Appeals brushed this question lightly aside (R. 69).

The petitioner believes and submits that these very radical tax amendments do actually, in the phraseology of the insular Court, "fall on the wrong side of the line"; that they are an attempt to exercise the power of Congress to tax to promote the "general welfare",—not delegated to the Legislature. [Point VIII, *infra*, pp. 78-82.]

**Petitioner's Position, and Errors to be Urged.**

These have been indicated in stating each of the foregoing "Questions Presented" (*ante*, pp. 23-31).

**Reasons for Granting the Writ.**

1. This case presents important questions of federal law which have not been, and it is believed should be, directly decided by this Court.

2. *The first* is whether the unqualified word "uniform", standing alone, as used by the Congress in its requirement in the 22nd paragraph of Section 2 of the Organic Act for Puerto Rico of March 2, 1917 (39 Stat. 951, 952),

> "That the rule of taxation in Porto Rico shall be uniform",

requires inherent or intrinsic uniformity in taxation in Puerto Rico; or only geographic uniformity throughout the Island.

3. *The second* is whether or not the legislature of Puerto Rico, under the powers delegated to it by the Congress by the Organic Act, and the restrictions contained in that Act upon its delegated powers, particularly the requirements of the first paragraph of Section 2, of "due process of law",

and of "the equal protection of the laws", with that of the 22nd paragraph, above quoted, that the rule of taxation in Puerto Rico shall be "uniform",—and of the Fifth Amendment to the Constitution,— and in view of the community property laws in force in Puerto Rico [and without specifically amending them],—possesses the power, in its discretion, to levy income taxes against the husband alone, calculated upon the entire aggregate amount of the conjugal community income of husband and wife.

4. The Supreme Court of Puerto Rico has said, in construing a tax statute (*Casal* v. *Sancho Bonet, Treasurer, supra*, 53 P. R. Rep. 609, 618):

> "However, as the law involved is a tax statute which must be construed in the sense most favorable to the taxpayer, we are inclined to hold that the rule adopted *in the States of the Union where the conjugal partnership also exists in an identical or similar form to that recognized in this jurisdiction* is applicable to Puerto Rico" (Italics supplied);

and, in a later case, on rehearing (*National City Bank* v. *De la Torre*, 54 P. R. Rep. 651, 654-655):

> "Given the changes that have occurred in the institution in Puerto Rico, similar to those of California, we do not doubt in reality that the interest of the wife is something more than a mere expectancy and that it can be said that here, as well as in California, her interest in the property of the conjugal partnership is greater than that of a presumptive heir."

But in the present case the insular Supreme Court, called upon directly to face the question of the power of the Legislature, in view of this Court's decisions[28] in cases coming from various "community law" States of the Union, avoided the issue by saying (R. 13):

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[28] *Ante*, foot-notes 16, 23, 24, and *infra* 42 and 43; pp. 10-11, 16, 17-18, and 68.

> "Just how close to a vested right she" [the wife] "may have in particular situations, we may well leave for the future. Saying that 'the interest of the wife is something more than a mere expectancy' does not go so far as to call the wife's interest a vested one, and that is the only question before us at this time;"

and therefore found,

> "no escape" (R. 14) "from the doctrine laid down in *United States* v. *Robbins*, 269 U. S. 315,"

and upheld the statute here involved on that ground.

In thus discussing "a vested right", the insular Court was clearly referring to this Court's opinions in *Poe* v. *Seaborn, supra*, 282 U. S. 101, 110-113, and its companion cases, where that term was used as indicating some definite *ownership* in the wife, in contra-distinction to the "mere expectancy" dealt with in *United States* v. *Robbins, supra*, 269 U. S. 315, 327.)

Petitioner believes that this exhibits a complete misunderstanding of this Court's decisions, and a misapplication of them by the insular Court.

The Circuit Court of Appeals, erroneously treating the question as one of local law (R. 62), said simply: "we need go no further than to say the judgment below is not inescapably wrong", on this point.

5. Upon the decision of the *first question* above there depend in this case the further determinations of whether the Legislature of Puerto Rico possesses the powers: (1) To levy income taxes, surtaxes as well as normal taxes, on sliding scales, *at progressive rates*, at higher percentages upon higher incomes, progressively; (2) To lay double taxation on stockholders of corporations upon corporate dividends; and likewise (3) To levy double taxation upon partners, on partnership profits.

6. Aside from all other questions here, basically the underlying important questions are the foregoing of the

powers of the Legislature of Puerto Rico; and of the validity of the radical and far reaching amendments to the Income Tax Laws made by these amendatory Acts of 1941; and also of the power of the Legislature,—under the limited taxing powers delegated to it by the Congress by Section 3 of the Organic Act,—to levy taxes for assumed "general welfare" purposes, beyond usual govenmental needs,—and taxes of such a manifestly arbitrary, unnecessary, and confiscatory character as those sought to be provided by the amendatory statutes of 1941 here in question.

There are also the not unimportant questions of the construction of the November, 1941, amendment limiting the retroactivity of the Income Tax Act to the calendar year 1941, as above indicated; and of the effect on the validity of the entire Section 12(a) as amended by the Act of May 13, 1941, changing the rates of the normal tax, of striking down the admittedly invalid exception discriminating in favor of American citizens.

7. The decisions of the lower courts on all these questions are in conflict with the applicable decisions of this Court and of the State Courts, and are wrong. They should be reviewed by this Court, and reversed; and the insular Treasurer's "reliquidation" of petitioner's 1940 income tax should be vacated.

WHEREFORE, it is respectfully requested that this petition for a writ of certiorari be granted.

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